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UNCLAS SECTION 01 OF 02 BRUSSELS 001476

SENSITIVE  
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DEPARTMENT FOR EUR/ERA

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TAGS: [PREL](#) [PGOV](#) [EUN](#)  
SUBJECT: EU LEADERS AGREE ON CZECH TERMS FOR SEALING TREATY OF  
LISBON, AND ON EXTERNAL ACTION SERVICE

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¶1. (U) SUMMARY: In order to obtain Czech President Vaclav Klaus's signature ratifying the Lisbon Treaty, EU leaders at their October 29-30 European Council meeting agreed to grant the Czech Republic an opt-out from the EU Charter of Fundamental Rights, per the Czech leader's request. Czech Republic ratification is also subject to a Czech Constitutional Court ruling on the Treaty's compatibility with the Czech constitution, which may come as early as November 3. The EU leaders also took note of preparatory work for the entry into force of "Lisbon," endorsing guidelines for the establishment of the European External Action Service, which they hope to adopt by April 2010. END SUMMARY.

¶2. (U) EU leaders at their dinner discussions on October 29 agreed on the condition asked by Czech President Klaus for signing the Treaty of Lisbon. The deal, announced by Swedish PM Reinfeldt and Commission President Barroso, takes the form of an opt-out for the Czech Republic from the EU Charter of Fundamental Rights, a derogation already granted to the UK and Poland during the treaty negotiations. The leaders concurred that they shall "at the time of the conclusion of the next Accession treaty and in accordance with their respective constitutional requirements" attach a protocol (to the Treaty on European Union and the Treaty on the Functioning of the EU) providing for the Czech derogation alongside the existing British and Polish opt-outs. The implication is that there will be no reopening of the current Lisbon ratification process: the Czech derogation will be folded into the forthcoming ratification process that is expected to cover Croatia's accession to the EU.

¶3. (U) President Klaus had recently raised concerns that the EU Charter of Fundamental Rights, a political declaration that will acquire legally binding status with the Lisbon Treaty, could be invoked against post-WWII decrees (the so-called Benes Decrees) that provided for the confiscation of property and expulsion of ethnic Germans from Czechoslovakia. Reinfeldt said at his press conference that the new derogation granted to the Czech Republic would have "no legal impact for its neighboring countries." Germany, Austria and Hungary, who all had citizens expelled from Czechoslovakia, initially raised concerns about the opt-out demanded by Klaus, and Slovakia had pressed for equal treatment with the Czech Republic. The Swedish proposal as submitted to the Czechs was endorsed by the EU-27 more easily than expected during dinner discussions on October 29. Reinfeldt attributed the deal to the flexibility of many of the EU leaders.

¶4. (SBU) COMMENT: With regard to the legal application of the Treaty of Lisbon and its relation to the legal systems of member states (and with regard to Reinfeldt's assertion of no legal impact on neighboring countries), the Presidency conclusions from the European Council confirm that:

-- The Treaty of Lisbon provides that competences not conferred upon

the Union in the Treaties remain with the Member States;

-- The Charter is addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. END COMMENT

15. (U) For his part, a smiling and confident-looking President Barroso commented that the leaders had removed the last political obstacle to full ratification of the Lisbon Treaty. "I think we will pretty soon have the Lisbon Treaty in place," he said. Barroso confessed he personally disliked the idea of granting opt-outs; however, he argued such concessions were sometimes necessary to recognize the EU's diversity.

16. (SBU) The Czech Constitutional Court on November 3 will reportedly address the issue, raised by a group of pro-Klaus Czech senators, on the Lisbon Treaty's compatibility with the Czech constitution. If the Court rules in favor of compliance, Klaus is expected to sign the Czech ratification act. How quickly he does so remains to be seen, according to Embassy Prague. (Klaus will reportedly be visiting the U.S. November 4-7.) Neither Reinfeldt nor Barroso mentioned any specific date for the entry into force of the treaty. (Note: That will depend on when the Czech Republic deposits its instruments of ratification.)

17. (U) The EU leaders also took note of preparatory work for the entry into force of the Lisbon Treaty. They endorsed a report from the Swedish Presidency containing guidelines for the establishment of the European External Action Service (EEAS) (Reftel). They invited the future High Representative to propose the specific organization and functions of the EEAS as soon after the entry into force of the Lisbon Treaty as possible, with a view to the Council adopting the EEAS's structure by the end of April 2010. The European Council also recognized "the need, as underlined in the

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European Security Strategy, for the EU to become more capable, more coherent and more strategic as a global actor, including in its relations with strategic partners, in its neighborhood and in conflict-affected areas."

18. (SBU) COMMENT: Assuming full ratification of the Lisbon Treaty in the near term, we expect the European Council could meet in extraordinary session in November to name the Council's permanent President and the High Representative/ Commission Vice-President for Foreign and Security Affairs. The nomination of the latter will enable Commission President Barroso then to name the rest of the European Commission, which will need European Parliament consent, possibly in December. While implementation of the Lisbon Treaty, once it enters into force, will take many months, there could well be a more immediate, positive transformation of the EU's image globally as its institutions coalesce around Lisbon's strategic intent. END COMMENT

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